

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALAREN L. FRAZIER,

Defendant and Appellant.

C062808

(Super. Ct. No. SF099940A)

Defendant Alaren L. Frazier committed a series of burglaries and vehicle thefts over the course of nine days in April 2006. A jury found him guilty of one count of first degree robbery, one count of first degree burglary, two counts of unlawful taking or driving a vehicle (a Tahoe and an Acura), five counts of receiving stolen property, and one count each of possession of methamphetamine, felon in possession of a firearm, and assault on a peace officer, and found three arming enhancements and two elderly victim enhancements true. Defendant waived jury trial on two alleged prior serious felony convictions, and the court, in a bifurcated proceeding, found

those allegations to be true. The court sentenced defendant to 25 years to life on the first degree robbery conviction, plus 10 years for the two prior serious felony convictions, plus a year for the elderly victim enhancement, for an aggregate state prison sentence of 36 years to life.¹

Defendant appealed the judgment on the ground that it was error to convict him of both robbery and receiving the stolen property taken in the robbery. The People agreed and we reversed the receipt of stolen property conviction. We remanded the matter for resentencing with directions to the trial court "to impose a consecutive term of 25 years to life on the unlawful taking or driving of the Tahoe (count 5), and to either impose a consecutive term of 25 years to life on the unlawful taking or driving of the Acura (count 1) or state its reasons for imposing a concurrent term."²

The matter came on for resentencing on May 26, 2009. The trial court vacated the unlawful taking or driving sentences and resentenced defendant to consecutive terms of 25 years to life as to each of those counts. The court vacated the judgment as

¹ The court also sentenced defendant to a concurrent term of 25 years to life for each of the two counts of unlawful taking or driving a vehicle, each of the two counts of receiving stolen property, and the single count of being a felon in possession of a firearm. The court stayed terms of 25 years to life on the burglary count and the three receiving stolen property counts, and ordered the counts of possession of methamphetamine and assault on a peace officer stricken for purposes of sentencing.

² The remittitur issued on April 3, 2009.

to one of the receipt of stolen property charges and dismissed that charge in the interest of justice. The original sentence as to the remaining counts and enhancements remained unchanged, leaving a modified sentence of 86 years to life in state prison.

Defendant filed an untimely notice of appeal, which was ultimately marked "Received" by the superior court. Defendant then filed a new notice of appeal, and we granted his request for constructive filing.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a three-page supplemental opening brief raising four issues. Because his claims are difficult to understand and wholly unsupported by analysis or legal authority, we reject them on that basis. (*People v. Galambos* (2002) 104 Cal.App.4th 1147, 1159 [appellate contentions must be supported by analysis]; *People v. Sangani* (1994) 22 Cal.App.4th 1120, 1135-1136 [analysis must be connected to evidence in the case]; *People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [reviewing court need not discuss claims that are asserted perfunctorily and insufficiently developed]; *People v. Hardy* (1992) 2 Cal.4th 86, 150 [same].) In any event, defendant's claims fail on the merits. Defendant bears the burden of

showing both error and prejudice. (*People v. Coley* (1997) 52 Cal.App.4th 964, 972.) He fails to do either with respect to any of his contentions.

First, he claims he did not waive jury trial on the two prior serious felony conviction allegations. To the contrary, the record contains our prior opinion, which states that defendant waived jury trial on the two special allegations. Therefore, we reject defendant's claim.

Second, defendant claims his trial attorney failed to bring "a new motion to strike the strikes" at resentencing. We can only presume, from the limited record before us, that defense counsel's original motion to strike defendant's prior strikes was denied. We have no reason to believe that the same motion presented a second time to the same trial judge at resentencing would have produced a different result. We reject this claim as well.

Third, defendant claims he suffered cruel and unusual punishment and was subject to double jeopardy as a result of having to be resentenced "because of Hon. K. Peter Sakers, false statement saying 'He read a case where 25 years to life sentences could be ran concurrent [*sic*].'" There is nothing in the record to suggest that the trial court's statement was in any way false. Moreover, in the absence of any analysis or citation to authority by defendant, we cannot review his claim.

Finally, defendant claims an error in the court's order for restitution. He argues that the facts show the victim's Acura had no damage to it when it was recovered and there was no

evidence presented at trial that defendant damaged the vehicle. Defendant forfeited this issue when he failed to object to the requested restitution at the sentencing hearing. (*People v. Smith* (2001) 24 Cal.4th 849, 852 [sentencing error is forfeited by failure to object unless it involves a pure question of law that is correctable without referring to factual findings in the record or remanding for further findings].)

In any event, he has failed to meet his burden on appeal. Once the victim makes a prima facie showing of economic losses incurred as a result of the defendant's criminal acts, that showing "establishes the amount of restitution the victim is entitled to receive," and the burden shifts to the defendant to disprove the amount of losses claimed by the victim. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 886.)

The People submitted a supplemental probation report containing documentation (e.g., receipts, pictures and an estimate from a body shop; receipts from two towing companies; a rental invoice; and copies of checks from an insurance company) in support of the victim's claimed economic loss of \$6,186.36. The burden thus shifted to defendant to disprove the claimed amount. Defendant did nothing to disprove the victim's claim at sentencing, and he does nothing here, other than to argue that there was no damage to the stolen vehicle when it was recovered and no evidence of damage was offered at trial. Without any analysis or citation to facts in the record, defendant failed to rebut the evidence in the supplemental probation report. The order awarding restitution in the amount of \$6,186.28 was not an

abuse of discretion. (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1382.)

Having undertaken an examination of the entire record, we find no arguable error in favor of defendant.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.